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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

EDDIE BLEDSOE,

Defendant and Appellant.

B286134

(Los Angeles County
Super. Ct. No. TA139164)

APPEAL from a judgment of the Superior Court of Los Angeles County, Laura R. Walton, Judge. Remanded with directions.

Katharine Eileen Greenebaum, under appointment by the Court of Appeal for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Shawn McGahey Webb, Supervising Deputy Attorney General, and Amanda V. Lopez, Deputy Attorney General, for Plaintiff and Respondent.

Appellant Eddie Bledsoe appeals from a judgment sentencing him to a state prison term of 12 years for a conviction of assault with a firearm and shooting at an inhabited dwelling. Bledsoe argues that a remand is necessary to permit the trial court to exercise its discretion to determine whether to strike the firearm enhancement imposed under Penal Code section 12022.5. We affirm Bledsoe's conviction, and remand for a new sentencing hearing.

FACTUAL AND PROCEDURAL BACKGROUND

Bledsoe was charged with attempted premeditated murder (Count 1) (Pen. Code¹, §§ 664, 187, subd. (a)), assault with a firearm (Count 2) (§ 245, subd. (a)(2)), and shooting at an inhabited dwelling (Count 3) (§ 246). An enhancement for personal discharge of a handgun (§ 12022.53) was alleged as to Count 1, and personal use of a handgun (§ 12022.5, subds. (a), (d)) as to Count 2.²

The jury found Bledsoe not guilty on Count 1, but guilty on Counts 2 and 3. It found the firearm allegation on Count 2 true. The trial court sentenced Bledsoe to a 12 year term: the low term of 2 years on Count 2, with a consecutive upper term of 10 years on the enhancement; as to Count 3, the court sentenced him to the upper term of 7 years, stayed pursuant to section 654.³

¹ All further statutory citations are to the Penal Code,

² Because Bledsoe challenges only the imposition of the sentence on the enhancement, we will not repeat the evidence of the crimes.

³ The abstract of judgment incorrectly shows a term of 0 years on Count 3. Because we remand for resentencing, we do not order the abstract corrected at this time.

In imposing the sentence, the trial court indicated that its choice of the low term on Count 2 was based on Bledsoe's record. Acknowledging he had a robbery conviction, the court noted Bledsoe was a juvenile at the time of that offense, and the conviction was 14 years old. His adult record, other than this case, was solely for misdemeanor offenses.

With respect to the enhancement, the trial court imposed the upper term because Bledsoe had armed himself, and then shot into a residence where multiple people were present, including children. The court noted, "But for the grace of God, nobody was hit."

At Bledsoe's request, the trial court recommended him for fire camp.

DISCUSSION

Bledsoe argues we should vacate his sentence, and remand for resentencing, pursuant to the amendment to section 12022.5 that now provides the trial court discretion to strike a firearm enhancement otherwise applicable under that provision. At the time of Bledsoe's sentencing, former section 12022.5 prohibited the trial court from striking that enhancement. In October 2017, however, the Legislature passed S.B. 620, which took effect on January 1, 2018. The statute provides, in relevant part: "The court may, in the interest of justice pursuant to section 1385 and at the time of sentencing, strike or dismiss an enhancement otherwise required to be imposed by this section." (§ 12022.5, subd. (c), as amended by Stats. 2017, ch. 682, § 1.)

Bledsoe argues, Respondent concedes, and we agree that the amendment applies to Bledsoe, whose sentence was not final when the provision went into effect. (See *People v. Billingsley*

(2018) 22 Cal.App.5th 1076, 1080 (*Billingsley*); *People v. Watts* (2018) 22 Cal.App.5th 102, 119.)

This Court has previously held that when, as here, the defendant was sentenced on a firearm enhancement prior to the passage of S.B. 620, remand for resentencing is necessary unless “the record . . . ‘clearly indicate[s]’ the court would not have exercised discretion to strike the firearm allegation [] had the court known it had that discretion.” (*Billingsley*, *supra*, 22 Cal.App.5th at p. 1081; see also *People v. McDaniels* (2018) 22 Cal.App.5th 420, 425 [“a remand is required unless the record shows that the trial court clearly indicated when it originally sentenced the defendant that it would not in any event have stricken a firearm enhancement”].)

Respondent argues, however, that the trial court’s decision to impose the upper term on the enhancement demonstrates that the trial court would not have stricken the enhancement, had it had the discretion to do so at the time of sentencing. Respondent acknowledges this Court’s decision in *Billingsley*, but argues both that *Billingsley* was wrongly decided and is distinguishable. We disagree.

In *Billingsley*, we rejected an argument similar to the one Respondent makes here, holding the record did not “‘clearly indicate’ the court would not have exercised its discretion to strike the firearm allegations had the court known it had the discretion.” (*Billingsley*, at p. 1081.) While the trial court in *Billingsley*, unlike the trial court here, had suggested it would not strike the firearm enhancement even if it had the discretion to do so, we nonetheless found that statement not determinative of the outcome. “‘Defendants are entitled to sentencing decisions made in the exercise of the ‘informed discretion’ of the sentencing court.

[Citations.] A court which is unaware of the scope of its discretionary powers can no more exercise that ‘informed discretion’ than one whose sentence is or may have been based on misinformation regarding a material aspect of a defendant’s record.”” (*Ibid.*)

In this case, the court did not attempt to impose the maximum sentence, choosing instead the low term for the underlying offense, and agreeing to recommend fire camp. Unlike *People v. McVey* (2018) 24 Cal.App.5th 405, on which Respondent relies, the trial court in this case did not state that the sentence it imposed was the only appropriate sentence for the offense. We acknowledge that, having imposed the upper term of the enhancement, it is not clear the trial court will now exercise its discretion to strike. In light of the other portions of the sentence, however, and mindful of the admonition that defendants are entitled to decisions made in exercise of the court’s informed discretion, we see no clear indication that the trial court would not have stricken the firearm enhancement; accordingly, we remand for resentencing.

DISPOSITION

The conviction is affirmed. The sentence is vacated, and the matter remanded to allow the trial court to conduct a new sentencing hearing to determine whether to exercise its discretion to strike the firearm enhancement previously imposed (§ 12022.5, subd. (a)).

ZELON, J.

We concur:

PERLUSS, P. J.

FEUER, J.